

RESOLUTION NO. BPC2008-006

**A RESOLUTION OF THE GALLATIN COUNTY BOARD OF PARK COMMISSIONERS APPROVING A
LICENSE AGREEMENT FOR AN AREA OF PROPERTY ON THE REGIONAL PARK**

THIS RESOLUTION was introduced by the Board of Park Commissioners, moved by Commissioner Clarkson, and seconded by Commissioner Fink. This resolution was adopted Unanimously

WHEREAS, the Park Commission has the authority under MCA § 7-16-2325 (b) to "make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon said board"; and

WHEREAS, there exists an area on the Gallatin County Regional Park that has been designated by the Park Commission as a location for the "Dinosaur Playground"; and

WHEREAS, a hearing was held on October 3, 2008 in accordance with MCA § 7-16-2325 and the license was approved by a majority of the members of the board of park commissioners by a ye or nay vote.

NOW THEREFORE IT BE RESOLVED:

We hereby move to approve the following:

1. Approval of a license agreement with between GALLATIN COUNTY, 311 WEST MAIN and FRIENDS OF REGIONAL PARKS, P.O. Box 6340, Bozeman, MT 59771 for the purpose of planning, organizing, staging, and preliminary site excavation for a "Dinosaur Playground" on the Regional Park for a period of three (3) months.
2. Designation of Michael Harris, Gallatin County Conservation and Parks Director (Director) as the contact person and project manager for the term of the License, and authorize the Director to enter into and issue extensions of the term of the License Agreement if needed.

PASSED, ADOPTED, AND APPROVED this 3 day of October, 2008 by the Board of Park Commissioners.

BOARD OF PARK COMMISSIONERS OF
GALLATIN COUNTY, MONTANA


Patrick Finnegan, Chair

**GALLATIN COUNTY BOARD OF PARK COMMISSIONERS REAL PROPERTY
LICENSE, LEASE, CONSTRUCTION, AND IMPROVEMENT TRANSFER
AGREEMENT**

THIS REAL PROPERTY LICENSE AGREEMENT ("Agreement" or "License"), made and entered into the 3rd day of October, 2008 between GALLATIN COUNTY, 311 WEST MAIN of hereinafter called the "County" and FRIENDS OF REGIONAL PARKS, P.O. Box 6340, Bozeman, MT 59771, hereinafter called "FORPARKS". Upon adequate consideration, the COUNTY and FORPARKS agree the terms and conditions of this License are as follows:

LICENSE:

1. Premises: The COUNTY and FORPARKS agree the real property subject to this License is that certain premises more particularly described as follows:

An area generally described as the east side of the of the Gallatin County Regional Park from the west boundary of the 911 Complex to the east edge of the stream and from Vaquero Parkway south to stream crossing, designated as A on the Gallatin County Master Plan adopted November 2007, and attached hereto as Exhibit A, the "Premises".

2. COUNTY: COUNTY owns any necessary right, title and interest to enter into this Agreement with FORPARKS and designates Michael Harris, Gallatin County Conservation and Parks Director, as the project manager and contact for the County.

3. FORPARKS: FORPARKS represents and warrants to COUNTY that it has the right, power and authority to enter into this Agreement, and designates Stan Wagner, Board President as the contact for FORPARKS.

4. Term: This License is granted by the COUNTY to FORPARKS as revocable authority and permission to occupy the "Premises" from, October 1, 2008 to December 31st 2008. The License can be revoked upon reasonable notice from the COUNTY to FORPARKS. Upon revocation FORPARKS shall immediately vacate the "Premises".

5. Uses: FORPARKS agrees that the "Premises" shall be used and occupied only for the planning, organizing, staging, and preliminary site excavation for a "Dinosaur Playground" as described in the attached Exhibit B, and for no other purpose or purposes without the COUNTYs' written consent.

6. This paragraph is intentionally blank.

7. Compliance with Laws: FORPARKS shall fully comply with all federal, state and local laws, statutes, resolutions and ordinances, as they relate to the "Premises" during the term of this Agreement.

8. Maintenance and Repair: FORPARKS recognizes that the "Premises" are currently a grass hay field that the COUNTY has not developed the "Premises" for construction of any structural improvements such as playgrounds. FORPARKS shall maintain at its own expense the "Premises" in good repair and in a good and safe condition for the term of this agreement. FORPARKS shall notify the COUNTY in writing immediately of any damage. FORPARKS shall be financially responsible in cases of damages resulting from the FORPARKS's negligence or that of its agents or employees. FORPARKS shall remove any equipment or personal property from the "Premises" at the termination or revocation of this Agreement and restore the "Premises" to as good or better condition than it was in at the time FORPARKS originally entered the "Premises".

9. Utilities: The FORPARKS shall be responsible for all utilities its uses on the "Premises".

10. Indemnity: To the extent allowable under law, FORPARKS shall hold harmless, indemnify and defend COUNTY and its agents, principals, and employees from and against any and all claims, demands, damages, costs, expenses, losses, liability (including liability where activity is inherently or intrinsically dangerous), judgments, defense expenses and attorney's fees rising out of or resulting from FORPARKS's wrongful acts, errors, omissions, or negligence, or from FORPARKS's failure to comply with the requirements of this Agreement or with all federal, state and local law applicable to the performance of this Agreement. In the event of an action filed against COUNTY resulting from FORPARKS's performance under this Agreement, COUNTY may elect to represent itself and incur all costs and expenses of suit.

11. Insurance: FORPARKS shall carry comprehensive general liability insurance in an amount no less than of \$1,500,000 for each claim and \$1,500,000 for each occurrence; Automobile liability in the amount of \$1,500,000 combined single limit; Professional Liability or Errors and Omissions coverage in the amount \$1,500,000. Certificates of Insurance evidencing the above, naming GALLATIN COUNTY as an additional insured, must be supplied within five days of executing this Agreement. Such certificate shall require no less than 15 days notice of cancellation to COUNTY. Such requirement shall include insurance for fixtures, equipment, personal property, stock and inventory and all uses of the "Premises". Any insurance carried by FORPARKS shall include no exclusions related to toxic substances or hazardous waste. FORPARKS shall put COUNTY on immediate notice of any changes or cancellation in coverage.

FORPARKS shall require all Contractors and Sub-contractors to meet the same insurance coverage make the same certifications as above and require the certificates to be forwarded to COUNTY within ten days of entering into the subcontract.

Certificates of Insurance and all certificates of all renewals thereof shall be delivered to the COUNTY by FORPARKS. All Certificates of Insurance shall name COUNTY as additional insured or "loss payee as its interest shall appear" (Property). FORPARKS's insurance shall be primary and non-contributing.

12. Independent Contractors. CONTRACTORS and sub-CONTRACTORS shall at all times be considered independent CONTRACTORS. Notwithstanding its obligation to fulfill the Scope of Work herein, CONTRACTOR and its CONTRACTORS and sub-CONTRACTORS have been and will continue to be free from control or discretion over the their performance under this Agreement and in fact. COUNTY will not be responsible for withholding any state or federal taxes or social security, nor will the COUNTY extend any of the benefits to the CONTRACTOR that it extends to employees. The CONTRACTOR is required to maintain necessary records and withholding.

As an independent CONTRACTOR, CONTRACTOR must provide Workers Compensation for all employees in the amount required by Montana law. A Certificate of Insurance showing compliance with Montana Workers Compensation law (or exemption therefrom) must be supplied to COUNTY within ten (10) days of executing this Agreement.

13. Time Is of the Essence. The time of complying with this Agreement is of the essence and a violation is a material breach.

14. Non-Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision.

15. Entire Agreement. This document represents the entire and integrated Agreement between the COUNTY and FORPARKS and supersedes all prior negotiations, agreements or representations, either written or oral. This Agreement may be amended only by written instrument signed by both parties. Any notice under this Agreement must be in writing and must be sent by personal delivery or certified mail to the address designated above. The parties shall inform each other of any change in address.

16. Non-Assignment. COUNTY and CONTRACTOR, respectively, bind themselves, their successors, assigns and legal representatives to the other party with respect to all covenants, terms, or conditions of this Agreement. Neither COUNTY nor CONTRACTOR shall assign his Agreement without the written consent of the other.

17. Execution of Agreement. The Gallatin County Clerk and Recorder will keep the original Agreement. An exact unaltered copy of the original Agreement has the same force and effect as the original. The COUNTYs and FORPARKS agree that this Agreement shall be governed and interpreted according to the laws of the State of Montana. In the event of a dispute arising over this contract, venue shall be in the Eighteenth Judicial District of the State of Montana, in and for the County of Gallatin. The attorney's fees and costs, including that of in-house counsel shall be paid to the prevailing party in the event of any litigation or other claim brought by either party herein.

No waiver of any breach of this Agreement will be held as a waiver of any other subsequent breach thereof. Any remedy provided herein will be taken and construed as cumulative.

AGREED as of the date set forth above by:

COUNTY

 11-5-08
Mike Harris

FORPARKS

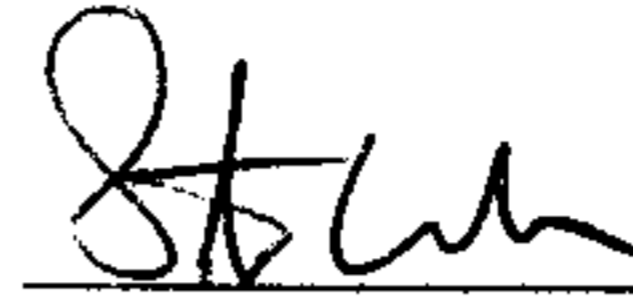
 10/2/08
Stan Wagner

EXHIBIT A THE “PREMISIS”

EXHIBIT B SITE GRADING

LICENSE
AREA

VALERO

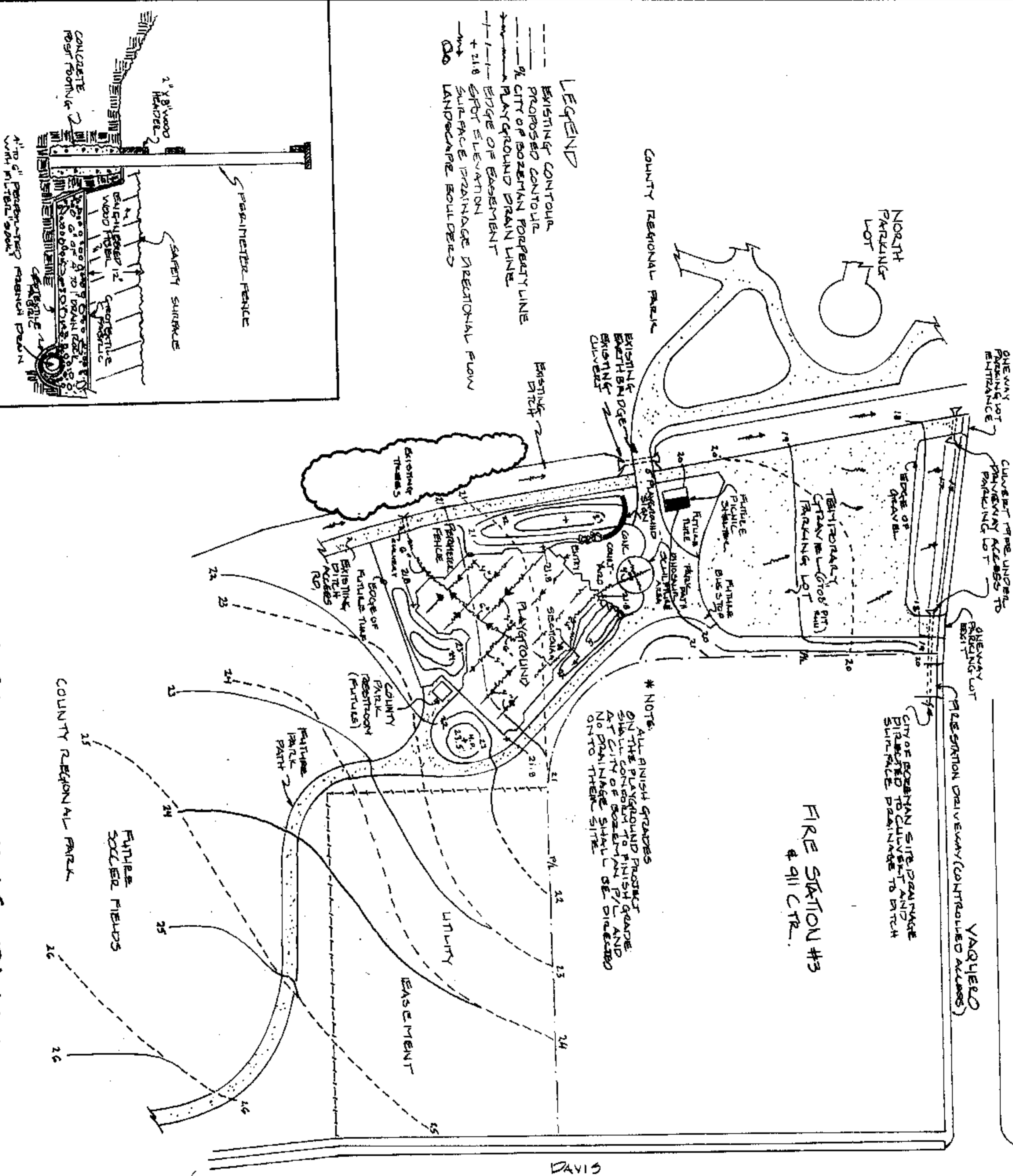
EXHIBIT B SITE GRADING

SECTION: A-A

| REVISIONS | BY |
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Date 9/25/08
 Scale 1" = 50'
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 PARTNERSHIP
 JCS
 Sheet 1 of 1 Sheets

NORTH

DAVIS

FIRE STATION #3
#911CTR.

* NOTE: ALL FINISH GRADES ON THE PLAYGROUND PRODUCT SHALL CONFORM TO FINISH GRADE AT CITY OF BOZEMAN P/L AND NO PAINT MAGE SHALL BE DIRECTED ONTO THEM SITE

NO 24-2



NOT 74

| REVISIONS | BY |
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